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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,724	07/24/2003	Yoshifumi Magari	SNY-035	8055
20374	7590	09/15/2005	EXAMINER	
KUBOVCIK & KUBOVCIK SUITE 710 900 17TH STREET NW WASHINGTON, DC 20006			RHEE, JANE J	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/625,724	Applicant(s) MAGARI ET AL.	
	Examiner Jane Rhee	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Rejections Withdrawn

1. The 35 U.S.C. 102(a) rejection of claims 1-2 anticipated by Harada et al. has been withdrawn due to applicant's argument filed on 7/7/2005.
2. The 35 U.S.C. 103(a) rejection of claims 3-4 over Harada et al. in view of Tani et al. has been withdrawn due to applicant's argument filed on 7/7/2005.

New Rejections

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ishii et al. (6790563).

As to claim 1, Ishii et al. discloses a nickel metal hydride storage battery comprising a positive electrode comprising nickel hydroxide (col. 4 line 59) as a active material, a negative electrode comprising a hydrogen absorbing alloy containing aluminum (col. 9 line 59), a separator (col. 7 line 22) and an alkaline electrolyte (col. 7 lines 57-67), wherein a complex forming agent which forms a complex with aluminum is included in the negative electrode (col. 6 lines 55-60). As to claim 2, Ishii et al. discloses

the complex forming agent is an aromatic carboxylic acid (col. 6 line 59,col. 8 line 38-46).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishii et al. in view of Tani et al. (6649304).

Ishii et al. discloses the nickel storage battery described above. As to claims 3-4, Ishii et al. fail to disclose a layer comprising a hydroxide or oxide of an element selected from the group consisting of calcium, strontium, scandium, yttrium, lanthanoids and bismuth that is formed on a surface of the positive electrode active material. Tani et al. teaches a layer comprising a hydroxide or oxide of an element selected from the group consisting of calcium, strontium, scandium, yttrium, lanthanoids and bismuth that is formed on a surface of the positive electrode active material (col. 6 lines 18-37) for the purpose of increasing an oxygen overvoltage upon charging and prevents generation of oxygen liberated due to reaction of the cathode active material with water when the rechargeable battery is maintained in a charged state and therefore, it is effective also in improving the self-discharging performance (col. 16 lines 40-56).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Ishii et al. with a layer comprising a hydroxide or oxide of an element selected from the group consisting of calcium, strontium, scandium, yttrium, lanthanoids and bismuth that is formed on a surface of the positive electrode active material in order to increase an oxygen overvoltage upon charging and prevents generation of oxygen liberated due to reaction of the cathode active material with water when the rechargeable battery is maintained in a charged state and therefore, it is effective also in improving the self-discharging performance (col. 16 lines 40-56) as taught by Tani et al.

Response to Arguments

5. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
September 9, 2005



PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER